

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION--DIVISION OF WATER QUALITY
JUNE 17, 2004

ITEM 8

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING AND REMANDING A PORTION OF AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION TO INCORPORATE REVISED BENEFICIAL USES

DISCUSSION

The North Coast Regional Water Quality Control Board (Regional Board) adopted a revised Water Quality Control Plan for the North Coast Region (Basin Plan) under Resolution No. 93-89 on December 9, 1993. The revised Basin Plan was approved by the State Water Resources Control Board (SWRCB) on March 21, 1994, by the Office of Administrative Law (OAL) on August 18, 1994, and by the U.S. Environmental Protection Agency (USEPA) on May 29, 2000.

On June 26, 2003, the Regional Board adopted Resolution No. R1-2003-0052 ([Attachment 1](#)) amending its Basin Plan by replacing Chapter 2, Beneficial Uses ([Exhibit A](#)). The amendment incorporates new and revised beneficial use definitions and brings the beneficial use designations of the region's waters up to date. The new designations reflect the current state of knowledge of the existing and potential uses of these waters and make the previous general designations more specific. The amendment also revises explanatory language in Chapter 2.

The key points of the proposed amendment include:

- 1) Revised list of water bodies and beneficial uses in Table 2-1, Beneficial Uses of Surface Waters of the North Coast Region, using the 1997 Calwater classification system, i.e., by hydrologic unit, hydrologic area, and hydrologic subarea;
- 2) Four new beneficial use categories: (1) Wetland Habitat (WET); (2) Water Quality Enhancement (WQE); (3) Flood Peak Attenuation/Flood Water Storage (FLD); and (4) Native American Culture (CUL);
- 3) Revised beneficial use definition for Commercial and Sport Fishing (COMM);
- 4) Renamed and redefined beneficial use category Biologically Significant Areas (BSA), replacing the existing category Preservation of Areas of Special Biological Significance (BIOL); and

5) Revised explanatory language regarding beneficial uses and their designations.

SWRCB staff review of the proposed amendment identified items that required clarification subsequent to Regional Board adoption. Regional Board Resolution No. R1-2003-0052 authorizes the Regional Board Executive Officer to make minor, non-substantive corrections to the language of the amendment, if needed, for clarity or consistency. By memorandum dated February 27, 2004 ([Attachment 2](#)), the Regional Board Executive Officer made non-substantive clarifications to the amendment after consultation with SWRCB staff.

SWRCB staff determined that the Regional Board's non-substantive clarifications addressed the majority of the issues; ~~therefore however~~, staff recommends that SWRCB approve the amendment with two exceptions, discussed below: following portions of the proposed amendment should be remanded to the Regional Board for further consideration for the reasons stated:

1. Staff recommends that SWRCB ~~dD~~isapprove the word 'subsistence' included in the proposed revised definition for the beneficial use Commercial and Sport Fishing (COMM). ~~Inclusion of the phrase subsistence fishing could require the development of site specific water quality objectives for various constituents to ensure human health protection, as related to bioaccumulation of toxic contaminants in aquatic organisms.~~ This issue would be better addressed as a separate beneficial use applied to appropriate water bodies where the use ~~and public health threat~~ occurs. Staff would like to develop a definition for this use that can be applied consistently statewide.
2. Staff recommends that SWRCB ~~rR~~emand the proposed new title and definition for the beneficial use Biologically Significant Areas (BSA) (intended as a replacement for the existing beneficial use Preservation of Areas of Special Biological Significance [BIOL]) and remand the explanatory language on pages 2-14.00 through 2-17.00 under the subheading Designation of the "Biologically Significant Areas" Beneficial Use of Attachment 1. Inclusion of a new title and definition is premature at this time, as SWRCB is in the preliminary stages of deciding how to proceed with potential amendments to the Water Quality Control Plan for Ocean Waters of California. These amendments, when adopted by SWRCB, are intended to provide a consistent statewide approach for addressing State Water Quality Protection Areas.

At SWRCB's April Workshop, there was discussion regarding a portion of the amendment that would add a category of 'subsistence fishing' to two beneficial use definitions, the existing COMM and the new CUL. Several commenters (Indian tribes) opposed the staff recommendation to delete subsistence fishing from the existing COMM use. The SWRCB Chair directed staff to meet with interested parties to resolve the issue before SWRCB would act on the proposed amendment. On April 20, 2004, staff sent an invitation to ninety-five interested parties for a public meeting to discuss the issue. The meeting was held on May 7, 2004, and included SWRCB and Regional Board staff and representatives for the Inter-Tribal Council of California and for the Yurok and Karuk tribes. SWRCB staff

explained that they support inclusion of subsistence fishing in CUL. SWRCB staff explained their reasons for recommending the removal of the category “subsistence fishing” from the COMM beneficial use, which include possible clarity problems with OAL and lack of statewide consistency in applying the beneficial use, since it would apply only to the North Coast Region. Staff stated the intent to pursue a separate beneficial use definition for subsistence fishing that would apply statewide. This was agreed to by the attendees.

POLICY ISSUE

Should SWRCB approve the amendments to the Basin Plan in accordance with the Staff Recommendation below?

FISCAL IMPACT

The Regional Board and SWRCB staff work associated with or resulting from this action can be accomplished within budgeted resources.

RWQCB IMPACT

Yes, North Coast Regional Board.

STAFF RECOMMENDATION

That SWRCB:

1. ~~Except as provided in No. 2 below, a~~ Approves the amendment to the North Coast Region Basin Plan revising Chapter 2, Beneficial Uses, as adopted under Regional Board Resolution No. R1-2003-0052 (Attachment 1), and as clarified by the Regional Board Executive Officer’s memorandum of February 27, 2004 (Attachment 2), with the exception of the addition of the word ‘subsistence’ in the revised definition for the beneficial use Commercial and Sport Fishing. ~~following provisions of the amendment which are remanded for further Regional Board consideration:~~

~~A. Disapprove the word ‘subsistence’ included in the proposed revised definition for the beneficial use Commercial and Sport Fishing (COMM).~~

- 2.B. Remands the proposed new title and definition for the beneficial use Biologically Significant Areas (BSA) (intended as a replacement for the existing beneficial use Preservation of Areas of Special Biological Significance [BIOL]) and remands the explanatory language on pages 2-14.00 through 2-17.00 under the subheading Designation of the “Biologically Significant Areas” Beneficial Use.

3. ___ Authorizes the Executive Director or designee to submit the amendment and administrative record as adopted under Regional Board Resolution No. R1-2003-0052, as corrected by the Regional Board Executive Officer, and as approved by SWRCB to OAL, and the standards action to USEPA for approval.

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Revised May 14, 2004
Revised Page Nos. 2-4 of Fact Sheet and
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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2004-

APPROVING AND REMANDING A PORTION OF AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE NORTH COAST REGION TO INCORPORATE REVISED BENEFICIAL USES

WHEREAS:

1. The North Coast Regional Water Quality Control Board (Regional Board) revised its Water Quality Control Plan for the North Coast Region (Basin Plan) under Resolution No. 93-89 on December 9, 1993, which was approved by the State Water Resources Control Board (SWRCB) on March 21, 1994, by the Office of Administrative Law (OAL) on August 18, 1994, and by the U.S. Environmental Protection Agency (USEPA) on May 29, 2000.
2. On June 26, 2003, the Regional Board adopted Resolution No. R1-2003-0052 (Attachment 1) amending the Basin Plan to incorporate revised Beneficial Uses to Chapter 2, Beneficial Uses.
3. SWRCB finds that the Basin Plan amendment to incorporate revised Beneficial Uses to Chapter 2, Beneficial Uses, is in conformance with the requirements of Water Code section 13240 which specifies that Regional Water Quality Control Boards shall periodically review and may revise Basin Plans.
4. Regional Board Resolution No. R1-2003-0052 delegated to the Regional Board Executive Officer authority to make minor, non-substantive corrections to the adopted amendment if needed for clarity or consistency. The Regional Board Executive Officer has made the necessary corrections to the amendment (Attachment 2).
5. SWRCB finds that a definition for subsistence fishing that can be applied consistently statewide should be developed; therefore, SWRCB disapproves the addition of the following portions of the proposed amendment are remanded for further Regional Board consideration: (A) the word 'subsistence' included in the Regional Board's revised proposed definition change for the existing beneficial use Commercial and Sport Fishing (COMM). In addition, SWRCB remands -and (B)- the proposed new title and definition for the beneficial use Biologically Significant Areas (BSA) (replacing the beneficial use Preservation of Areas of Special Biological Significance [BIOL]) and explanatory language regarding BSA.

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6. Regional Board staff prepared documents and followed procedures satisfying environmental documentation requirements in accordance with the California Environmental Quality Act and all other applicable State laws and regulations.
7. A Basin Plan amendment does not become effective until approved by SWRCB and until the regulatory provisions are approved by OAL. A standards revision must also be approved by USEPA.

THEREFORE BE IT RESOLVED THAT:

SWRCB:

1. Except as provided in No. 2 below, a Approves the amendment to the North Coast Region Basin Plan revising Chapter 2, Beneficial Uses, as adopted under Regional Board Resolution No. R1-2003-0052 (Attachment 1), and as clarified by the Regional Board Executive Officer's memorandum of February 27, 2004 (Attachment 2), with the exception of the following provisions of the amendment which are remanded for further Regional Board consideration addition of the word 'subsistence' in the revised definition for the beneficial use Commercial and Sport Fishing.;
 - A. Disapprove the word 'subsistence' included in the proposed revised definition for the beneficial use Commercial and Sport Fishing (COMM).
2. B- Remands the proposed new title and definition for the beneficial use Biologically Significant Areas (BSA) (intended as a replacement for the existing beneficial use Preservation of Areas of Special Biological Significance [BIOL]) and remands the explanatory language on pages 2-14.00 through 2-17.00 under the subheading Designation of the "Biologically Significant Areas" Beneficial Use.
3. Authorizes the Executive Director or designee to submit the amendment and administrative record as adopted under Regional Board Resolution No. R1-2003-0052, as corrected by the Regional Board Executive Officer, and as approved by SWRCB to OAL, and the standards action to USEPA for approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 17, 2004.

Debbie Irvin

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Clerk to the Board